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IN THE

Supreme Court of the United States

SEAN SILVEIRA, *et al.*,
Petitioners,

v.

BILL LOCKYER, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF SECOND AMENDMENT SISTERS, INC. AS *AMICUS CURIAE* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI AND REVERSAL

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All parties in this appeal have graciously consented to the filing of this brief which supports the position of Petitioners. These consents have been filed with the Clerk of the Supreme Court.

I. PURPOSE AND LOCATION OF THE *AMICUS CURIAE* SECOND AMENDMENT SISTERS, INC [*]

Second Amendment Sisters, Inc. is a 501(c)(3) Corporation, chartered in the Commonwealth of Virginia. It

[*] Second Amendment Sisters, Inc. is in compliance with S.Ct. Rule 37(6). Counsel for Petitioners did not author this brief in whole or in part. The money to pay for its printing came from Second Amendment Sisters, Inc.

was formed for the purpose of, "educating women to resist rape and violence against women, and promoting firearms safety". Your *amicus* is organized into forty-two State Chapters and has a mostly female membership representing each of the fifty States. Its mission statement reads:

> "Second Amendment Sisters, Inc. is a women's advocacy group dedicated to promoting the basic human right to self-defense, as recognized by the Second Amendment.
>
> We believe in personal responsibility, education, and enforcement of laws against violent criminals."

II. SPECIFIC INTEREST OF SECOND AMENDMENT SISTERS, INC. IN THE COURT'S GRANTING CERTIORARI

Legislators and judges cannot alter biology. Women, despite all of the protections afforded them by statute and case law, and the resultant progress they have made in education and employment remain the physically *weaker* sex. In addition to being generally larger and stronger than women, men, as a group, are also far more prone to commit violent crimes.[1] To the extent that they lack the physical strength and endurance of men, women have a special interest in acquiring and becoming proficient with firearms for use in self-defense.[2] Laws that impair access to firearms for self-

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[1] In 2000, the breakdown of arrests for various violent crimes according to sex was as follows: Murder and Non-Negligent Manslaughter, male 7,783 (89.36%), female 926 (10.64%); Forcible Rape, male 17,712 (98.87 %), female 202 (1.13%); Robbery, male 65,026 (89.91%), female 7,294 (10.09%); Aggravated Assault, male 252,921 (79.87%), female 63,709 (20.13%). *Crime In The United States, Uniform Crime Reports*, Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C., 2001, p. 233.

[2] In 2000, there were 260,950 reported rapes or sexual assaults, of which 246,180 (94.33%) involved female victims. *Criminal Victimization 2000*, Bureau of Justice Statistics, U.S. Department of Justice,

defense have a disparate impact on women.[3] The social and economic opportunities that have opened up to women in recent decades are of little consequence to members of their sex who are the subjects of autopsies, on life support, or waiting for an emergency room nurse to retrieve a rape test kit. What is generically referred to as "gun control" [4] is often

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Washington, D.C., June, 2001, p. 14. 84% did not involve a weapon. *Id.* Thus, in 2000 there were approximately 200,000+ instances where a woman's access to a firearm might have prevented her from becoming a victim. When no weapon is present the assailant's (or assailants') superior strength is a factor that permits an offense to take place. In such circumstances a firearm could give a woman a means of countering her attacker's physical advantage. Even an armed rapist would have something to fear when *staring down the barrel of gun.*

[3] As reflected in note 2, *supra*, in 2000, the overwhelming majority (94.33%) of victims of reported rapes and other sexual assaults were women.

[4] "Gun control" as envisioned by groups such as The Brady Campaign To Prevent Handgun Violence, formerly known as Handgun Control, Inc. (HCI), is a "slice-at-a-time" process intended to culminate in gun *prohibition.* Handgun Control, Inc. was originally known as the National Council To Control Handguns. Its founder, Nelson T. "Pete" Shields, III, was quite candid about his then-fledgling group's ultimate agenda when, in 1976, he stated to *The New Yorker*:

> "We're going to have to take one step at a time, and the first step is necessarily—given the political realities—going to be very modest. Of course, it's true that politicians will then go home and say, 'This is a great law. The problem is solved.' And it's also true that such statements will tend to defuse the gun-control issue for a time. So then we'll have to start working again to strengthen that law, and then again to strengthen the next law, and maybe again and again. Right now, though, we'd be satisfied not with half a loaf but with a slice. Our ultimate goal—total control of handguns in the United States—is going to take time. My estimate is from seven to ten years. The first problem is to slow down the increasing number of handguns being produced and sold in this country. The second problem is to get all handguns registered. And the final problem is to make the possession of all handguns and all handgun ammunition—except for the military, policemen, licensed security

a hindrance to women who, if armed, might have a fighting chance.

"The right to defend oneself against deadly attack is fundamental." *United States v. Panter*, 688 F2d 268, 271 (5th Cir. 1982). *See United States v. Gomez*, 81 F.3d 846, 850 n.7 (9th Cir. 1996). The Second Amendment guarantees the right to a means of self-defense. Lund, *The Second Amendment, Political Liberty, and the Right to Self-Preservation*, 39 Ala.

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guards, licensed sporting clubs, and licensed gun collectors—totally illegal." A Reporter At Large—Handguns", *The New Yorker*, July 26, 1976, p. 53, 57-58.

The "gun control" envisioned by Mr. Shields would eventually preclude possession of a handgun by a private citizen for self-defense. The views expressed in *The New Yorker* interview were not a short-lived aberration. Almost twenty years later syndicated columnist Charles Krauthammer wrote in the *Washington Post*:

> Ultimately, a civilized society must disarm its citizenry if it is to have a modicum of domestic tranquility of the kind enjoyed by sister democracies such as Canada and Britain. Given the frontier history and individualist ideology of the United States, however, this will not come easily. It certainly cannot be done radically. It will probably take one, maybe two generations. It might be 50 years before the United States gets to where Britain is today. Passing a law like the assault weapons ban is a symbolic–purely symbolic–move in that direction. *Its only real justification is not to reduce crime but to desensitize the public to the regulation of weapons in preparation for their ultimate confiscation.* "Disarm The Citizenry", *Washington Post*, April 5, 1996, p. A19. (italics added)

"[O]ne step at a time . . .]", "[N]ot to reduce crime *but to desensitize the public* . . ." These passages exemplify the disdain elites have for ordinary people who were not bright enough to attend Ivy League schools or afford homes in posh, *safe*, neighborhoods. Most of "the people" referenced in the Second Amendment do not travel in the same circles as Messrs. Shields and Krauthammer, or the publishers of *The New Yorker* or the *Washington Post*. Their paths in life sometimes require that they live or work in neighborhoods that are not as genteel as Georgetown, Potomac, or the Upper East Side of Manhattan.

L.Rev. 103, 117-120, 130 (1987). Second Amendment Sisters, Inc. has a specific interest in this case in that womens' abilities to exercise their fundamental right of self-preservation is jeopardized if the right guaranteed by the Second Amendment[5] is not considered to be an individual right, or as not being applicable to the States. The interests of women in having ready access to firearms for self-defense is underscored by the fact that local governments have no obligation to protect any particular individual. *See DeShaney v. Winnebago County Department Of Social Services*, 489 U.S. 189, 196-97, 109 S.Ct. 998, 1003, 103 L.Ed.2d 249, 258-59 (1989), *South v. Maryland*, 59 U.S. 396, 15 L.Ed. 433 (1856). Assuming that a woman can get to a phone and place a "911" call, she must be prepared to *defend herself* until an officer arrives on the scene.

Given that the police have no obligation to protect any particular individual, the *individual* right of self-defense is meaningless unless one has access to a practical and effective means of deterring or defending against an assault. Firearms give meaning to that right where people, due to size, age, or infirmity, lack the physical strength to fight off those who would harm them. As a brochure for the *Colt's Patent Firearms Mfg. Co.* put it, "Have no fear of any man no matter what his size. When danger threatens call on me, and I shall equalize."

Second Amendment Sisters, Inc. asks this Court to give due regard to the interests of women in "equalizing" things, be it in the workplace or a dark parking lot.

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[5] "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

CONCLUSION

For the reasons set forth above, Second Amendment Sisters, Inc. prays that this Court grant the petition for writ of certiorari, reverse the judgment of the United States Court of Appeals in *Silveira* v. *Lockyer*, 312 F.3d 1052 (9th Cir. 2003), and remand the case.

Respectfully submitted,

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